

**501: Receipt of Complaints**

- A. When a LTCOP receives information regarding a complaint or problem, a LTCO shall determine:
1. the type of complaint (using the uniform complaint categories provided by the Office);
  2. what outcome(s) the resident and complainant are seeking;
  3. what attempts have already been made to resolve the complaint; and
  4. whether the complaint is appropriate for LTCO activity.
- B. Examples of issues or complaints which are not appropriate for LTCO activity include those which:
1. do not directly impact a resident or former resident of a long term care facility;
  2. are outside the scope of the mission or authority of the LTCOP; or
  3. would place the LTCOP in the position of having an actual or perceived conflict of interest with the interest of a resident or residents.
- NOTE:** The LTCO may seek resolution of complaints in which the rights of one resident and the rights of another resident or residents appear to be in conflict or in dispute.
- C. When the complaint or issue involves a non-elderly resident, the LTCO shall determine:

1. if services benefit older residents of that facility generally, or are the only viable avenue of assistance available to the complainant; and
  2. if it does not significantly diminish the LTCOP efforts on behalf of older persons.
- D. The following topics shall be discussed with the resident or complainant:
1. alternatives for handling the complaint;
  2. encouragement for the resident or complainant to personally take appropriate action, with LTCOP assistance if needed;
  3. explanation that the LTCOP role is to act in accordance with resident wishes; and
  4. the LTCOP standard of confidentiality.
- E. Sources of information or complaint
1. Complaints or problems may be brought to the LTCOP by residents, families and friends of residents, long term care facility staff, and any other person.
  2. Complaints may be made anonymously to the LTCOP. Anonymous complaints must remain anonymous. In the majority of cases, the LTCOP can proceed without knowing the complainant's or resident's identity and should continue to investigate the issue. If the LTCO receiving the complaint is able to communicate directly with the anonymous complainant, the LTCO shall explain to the complainant that, in some circumstances, anonymity could limit the ability of the

LTCOP to investigate and resolve the complaint and will limit the ability of the LTCOP to inform the complainant of the outcome.

3. Ombudsman-initiated complaints -- A LTCO shall open a complaint case or file when the LTCO has personal knowledge of an action, inaction, or decision that may adversely affect the health, safety, welfare, or rights of residents.

**NOTE:** Such actions, inactions, or decisions include facility responses to natural disasters, evacuations, relocations, involuntary change of management, closures, or other unusual events. Such actions, inactions, or decisions also include the responses of governmental agencies to the concerns and conditions of residents in long term care facilities.

**F. Timeliness of response to complaints**

1. Every LTCO shall use his or her best efforts to initiate investigations (defined as “Date of First Action” in Section 215 of this Manual) of complaints in a timely manner in order to resolve the complaint to the satisfaction of the resident. A response is considered timely as follows:

**TABLE 5-A  
COMPLAINT RESPONSE**

<b>IF a complaint involves . . .</b>	<b>THEN the standard of promptness for a LTCO response is . . .</b>
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<ul style="list-style-type: none"><li>• abuse or gross neglect, and the LTCO has reason to believe that a resident may be at risk</li><li>• actual or threatened transfer or discharge from a facility</li><li>• use of restraints</li></ul>	within the next working day from the receipt of the message or information by the LTCOP provider agency
<ul style="list-style-type: none"><li>• abuse or gross neglect, and the LTCO has no reason to believe that a resident is at risk (i.e. the resident has left the facility for home or a hospital)</li></ul>	within 3 working days from the receipt of the message or information by the LTCOP provider agency
other types of complaints	within 7 - 30 working days or less depending upon severity of complaint

2. When the LTCOP will be unable to initiate investigations in a timely manner (e.g., due to a planned vacation, training, or extended illness), the Regional Ombudsman shall develop a plan for temporary coverage in order to meet the standard of promptness in accordance with provider agency policies and the requirements of this section.
3. The LTCO may inform the complainant when the complainant may expect investigative efforts to begin.
4. The LTCOP is not designed to serve as an emergency response system. Emergency or life threatening situations should be referred to "911" and other emergency response systems for immediate response.

**G. Resident focus**

1. Regardless of the source of the information or complaint, the resident of, or applicant to, a long term care facility is the LTCOP's client and all complainants shall be so informed.
2. Regardless of the source of the information or complaint, a LTCO shall, in the most efficient and effective way possible:
  - a. determine the resident's perception of the complaint or problem;
  - b. determine the resident's wishes with respect to the resolution of the complaint;
  - c. advise the resident of his or her rights; and
  - d. work with the resident in developing a plan of investigation and action that conforms with the LTCOP's empowerment mission.
3. Where the complaint relates to a regulatory violation within a long term care facility, other than an assisted living or shared housing, the LTCO may inform the resident and/or complainant that the LTCOP has the opportunity to provide information to the Department of Public Health surveyors before the surveyors begin the annual certification survey and seek the resident or complainant's permission to share the complaint information with surveyors. The LTCO may provide the name of the complainant or resident to surveyors for their offsite preparation with complainant or resident consent.
4. Resident consent refused or withdrawn
  - a. If at any point during the problem resolution and complaint investigations process, the resident

expresses that he or she does not want the LTCOP to take further action on a complaint involving the resident, the LTCO shall determine whether further efforts should be made on the complaint. In making this determination, the LTCO shall consider the following:

**TABLE V-B  
RESIDENT REFUSES CONSENT**

<b>IF the resident . . .</b>	<b>THEN the LTCO shall . . .</b>
<ul style="list-style-type: none"><li>• refuses to consent to LTCOP work on the complaint, or</li><li>• withdraws consent before the LTCO has verified the complaint</li></ul>	<ul style="list-style-type: none"><li>• discontinue work on the complaint; and</li><li>• follow steps below</li></ul>
<ul style="list-style-type: none"><li>• withdraws consent after the LTCO has verified or partially verified the complaint</li></ul>	<ul style="list-style-type: none"><li>• discontinue investigation and resolution activities on the complaint;</li><li>• determine whether the type of complaint is recurring. If it is recurring, the LTCO shall determine whether the circumstances merit other strategies towards resolution which would not involve or disclose the identity of the resident who has withdrawn consent (e.g., filing an ombudsman-generated complaint, presenting the issue to the resident or family council); and</li><li>• follow steps listed below</li></ul>

b. For all complaints in which the resident refuses

or withdraws consent, the LTCO shall:

- i. attempt to determine why the resident refused or withdrew consent, considering factors such as:
    - past responses of facility to complaints;
    - the resident's relationship with the staff;or
    - the experience of this resident or other residents in the facility or other facilities related to this type of complaint;
  - ii. inform the resident that he or she may contact the LTCOP regarding the withdrawn complaint or other complaints in the future; and
  - iii. provide a business card or brochure informing the resident how to contact the LTCOP.
- c. For all abuse and neglect complaints in which the resident, knowing full well the potential consequences of her/his refusal to give, or withdrawal of, consent, the LTCO shall:
- i. complete the steps outlined in Section 501(D)(4)(b);
  - ii. discontinue work on the complaint; and
  - iii. report the withdrawal or refusal immediately to the Office and Regional Ombudsman in keeping with Section 504 (O) of this Manual.

5. Resident unable to provide consent
  - a. The LTCOP shall advocate for a resident's wishes to the extent that the resident can express them, even if the resident has limited decision-making capacity.
  - b. When a resident is unable to provide or refuses consent to the LTCOP to work on a complaint directly involving the resident, the LTCO shall:
    - i. seek evidence from family, friends, and other sources that indicates what the resident would have desired and, where such evidence is available, work to effectuate that desire; and
    - ii. assume that the resident wishes to have his or her health, safety, welfare and rights protected.